HON'BLE SRI JUSTICE R. SUBHASH REDDY

Writ Petition No.19086 of 2007

Order:

In this writ petition, petitioners seek directions by way of Mandamus to declare the action of the third respondent in not adjusting stamp duty paid on the agreement of sale-cum-General power of Attorney, which was registered vide Document No.94 of 2006, under sale deed bearing No.P52/2007, relating to the land admeasuring Ac.8.13 guntas in S.No.856/A and Ac.4.02 guntas in S.No.857/A, situated at Burgula village of Farooqnagar Mandal, Mahaboobnagar District, as illegal and arbitrary and for a further direction to the respondents to release Document No.P52/2007.

2. Necessary facts in brief are as follows:

One Smt. Bhagyalakshmi was the owner of the lands covered by S.Nos.856/A and 857/A, admeasuring Ac.8.13 guntas and Ac.4.02 guntas respectively, situated at Burgula village, Farooqnagar Mandal, Mahaboobnagar District. She entered into agreement of sale coupled with General Power of Attorney in favour of one S. Venkat Reddy and others, received sale consideration of Rs.79,00,000/- and delivered possession to them. Subsequently, petitioners herein purchased the very same land and presented sale deed for registration by seeking adjustment of stamp duty paid at the time of agreement of sale. But, the said request was not acceded to and the document was kept pending vide Document No.P52/2007. As the agreement of sale in favour of

S. Venkat Reddy and others was followed by delivery of possession, the stamp duty was paid in view of Explanation-I to Article 47-A of

Schedule I-A of the Indian Stamp Act, 1899 (for short 'the Act'). The earlier agreement of sale was styled as agreement of sale-cum-General power of Attorney. Under the said document, stamp duty of Rs.4,97,895/- was paid, along with registration fee of Rs.2,000/- and also user charges of Rs.105/-. Subsequently, an amount of Rs.54,605/- was also paid by way of challans. Thus, totally, an amount of Rs.5,54,605/- was paid at the time of registration of the agreement of sale. Petitioners have purchased the said land and presented the sale deed by paying stamp duty of Rs.2,36,900/-, registration fee of Rs.39,500/- and user charges of Rs.105/-. They sought adjustment of the stamp duty which was paid at the time of agreement of sale. Their request for adjustment was not acceded to in terms of G.O.Ms.No.1475, Revenue (Registration.I) Department dated 30-07-2005.

3. The case of the petitioners is that earlier agreement of sale-cum-General Power of Attorney followed by delivery of possession was covered under Explanation-I to Article 47-A of
Schedule I-A of the Act and according to the said explanation, the stamp duty paid on the agreement of sale is to be adjusted while executing the sale deed.

4. Respondent No.3 has filed counter affidavit stating that the agreement of sale entered into in favour of S. Venkat Reddy and others was covered under Article 6(B) of Schedule I-A of the Act; however, Government, in exercise of powers under Section 9 of the Act, reduced the stamp duty payable under Article 6(B) of Schedule I-A of the Act in respect of documents relating to agreements or memoranda of agreement of sale or construction/development of immovable properties combined with General power of Attorney clause to 1% on the sale consideration or estimated cost of

construction/development, subject to a maximum of Rs.50,000/-, on the condition that the stamp duty shall not be adjustable at the time of registration of consequent sale deeds in pursuance of such agreements-cum-General Power of Attorney.

5. Heard learned counsel for the petitioner and also learned Government Pleader for Revenue appearing for the respondents.

6. Payment of stamp duty is notified in Schedule I-A of the Act, which was amended from time to time by A.P. State Amendments. Proper stamp duty and various kinds of instruments are notified in Schedule I-A as per the provision under Section 3 of the Act. Article 6 of the Act provides the quantum of duty payable on agreement or memorandum of an agreement not otherwise provided for. Under Article 6(A) of the Act, where the value of the agreement does not exceed Rs.5,000/-, stamp duty is Rs.10/-, if the value exceeds Rs.5,000/-, it is Rs.20/-, where the value exceeds Rs.20,000/-, but does not exceed Rs.50,000/-, stamp duty is Rs.50/-, and where the value exceeds Rs.50,000/-, it is Rs.100/-. Article 6(B) relates to an agreement for construction of a house or building including a multi-unit house or building or unit of apartment/flat/portion of a multi-storied building or for development/sale of any other immovable property. Stamp duty payable on such agreements is Rs.5/- for every one hundred rupees or part thereof on the market value or the estimated cost of the proposed construction/development of such property as the case may be, as mentioned in the agreement or the value arrived at in accordance with the schedule of rates prescribed by the Public Works Department authorities whichever is higher. Section 9 of the Act empowers the Government to reduce, remit or compound the duty if it is necessary to do so in the public interest by issuing any order to be published in the Official Gazette. The Government issued

G.O.Ms.No.1475 Revenue (Registration.I) Department dated 30-07-2005, in exercise of its powers under Section 9 of the Act reducing the stamp duty payable under the Act in respect of documents relating to agreements or memoranda of agreements of sale or construction/development of immovable properties combined with General Power of Attorney clause to 1% on the sale consideration of estimated cost of construction/development, subject to a maximum of Rs.50,000/- on the condition that the stamp duty so paid shall not be adjustable.

7. In this case, a perusal of the earlier agreement of sale deed which was entered into by Smt. Bhagyalakshmi, in favour of S. Venkat Reddy and others discloses that it is only an agreement of sale-cum-General Power of Attorney, but not a development agreement within the meaning of Article 6(B) of Schedule I-A of the Act. In the case of **Pechitti Ramakrishna V. Nekkanti Venkata Manohara Rao**[1], a learned single Judge of this court has held that Article 6(B) of Schedule I-A of the Act is applicable if the agreement relates to construction of a house or building including a multi-unit house or building or unit of apartment/flat/portion of a multi-storied building or for development/sale of any other immovable property. Further, in the same judgment, it is held that, considering the objects of A.P. Amendment Act 21 of 95, Article 6(B) of the Act would be applicable only in specified cases where agreement of sale was coupled with development agreement and the same cannot override the general provision of Article 6(A) of Schedule I-A of the Act. In view of the explanation which is added to Article 47-A of Schedule I-A of the Act, an agreement of sale followed by or evidencing delivery of possession of the property agreed to be sold shall be chargeable as a “Sale” under the said Article. As per the proviso, where the sale deed is executed in

pursuance of an agreement of sale as mentioned in the explanation, the stamp duty, if any, already paid or recovered on the agreement of sale shall be adjusted towards the total duty leviable on the sale deed. In view of the explanation which is added by way of Amendment to Article 47-A of Schedule I-A of the Act, it is clear that an agreement of sale coupled with delivery of possession is chargeable with stamp duty as contemplated under Section 47-A, but not under Article 6(B) of the Act. The very Article 6 is applicable only if the agreement or memoranda of agreement is not otherwise provided for. In view of the specific provision made for charging stamp duty by way of adding explanation to Section 47-A of the Act, an agreement followed by delivery of possession is governed under Section 47-A of the Act, but not under Article 6 of the Act. Even Article 6(B) of the Act relates to an agreement for construction of a house or building including a multi-unit house or building or unit of apartment/flat/portion of a multi-storied building or for development/sale of any other immovable property, but it does not cover an agreement simplicotor without any clause for development followed by delivery of possession of the property.

8. In that view of the matter, the orders issued by the Government in the G.O., referred above reducing the stamp duty are applicable for the agreements covered under Article 6(B) of Schedule I-A of the Act and as much as the very Article will not apply to the facts of the case on hand, there is no reason or justification for the respondents in not adjusting the stamp duty while considering the sale deed covered by Document No.P52/2007.

9. In view of the aforesaid reasons, petitioners are entitled for adjustment of stamp duty for registration of Document No.P52/2007. Accordingly, respondents are directed to consider Document No.P52/2007 for registration, by adjusting the stamp duty paid at the

time of agreement of sale in favour of S. Venkat Reddy and others, within a period of four weeks from the date of receipt of a copy of this order, provided the said document is otherwise in order and in accordance with the Indian Stamp Act, 1899 and Registration Act, 1908.

10. The writ petition is accordingly disposed of. No order as to costs.

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JUSTICE R. SUBHASH REDDY.

October 30, 2007
msv/MRR

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[1] **2004(1) ALD 557**